

Assembly Bill No. 2086

CHAPTER 968

An act to amend Sections 10089.7, 10089.14, 10089.15, 10089.16, 10089.28, 10089.29, 10089.30, 10089.35, 10089.36, 10089.40, and 10089.41 of, and to repeal Section 10089.18 of, the Insurance Code, relating to earthquake insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed
with Secretary of State September 27, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, Knowles. Earthquake insurance: California Earthquake Authority.

Existing law creates the California Earthquake Authority, which is authorized to become operational and issue policies of basic residential earthquake insurance, as defined, under certain conditions. These conditions include a determination by the Internal Revenue Service that the authority is exempt from federal income tax, a requirement for certain commitments from insurers and reinsurers, and enactment of a subsequent statute that expressly authorizes the authority to issue policies of earthquake insurance.

This bill would:

- (1) Revise the membership of the authority's advisory panel, and, in general, provide for its appointment by the Governor rather than the Insurance Commissioner and provide for 4-year terms.
- (2) Provide that there shall be a limited civil immunity on account of any act performed or omitted or obligation entered into on the part of the authority's governing board, advisory panel, or any member of either. It would also revise conflict of interest provisions relating to the authority.
- (3) Provide for claims against the authority and indemnification by the authority of participating insurers, as specified.
- (4) Revise provisions relating to initial operating capital to permit certain small insurers to make installment payments and provide for associate participating insurers.
- (5) Revise provisions relating to revenue bonds.
- (6) Revise provisions relating to insurer assessments.
- (7) Make related changes.

The bill would declare that it is to take effect immediately as an urgency statute.

The bill would become operative only if SB 1993 is also enacted.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Homeowners' Insurance Availability Act of 1996, or as the Knowles Act.

SEC. 2. Section 10089.7 of the Insurance Code, as added by Section 2 of Chapter 944 of the Statutes of 1995, is amended to read:

10089.7. (a) The authority shall be governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Rules Committee shall serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

(b) The board shall be advised by an advisory panel whose members shall be appointed by the Governor, except as provided in this subdivision. The advisory panel shall consist of four members who represent insurance companies that are licensed to transact fire insurance in the state, two of whom shall be appointed by the commissioner, two licensed insurance agents, one of whom shall be appointed by the commissioner and three members of the public not connected with the insurance industry, at least one of whom shall be a consumer representative. In addition, the Speaker of the Assembly, and the Chairperson of the Senate Rules Committee may each appoint one member of the public not connected with the insurance industry. Panel members shall serve for four-year terms, which may be staggered for administrative convenience, and panel members may be reappointed. The commissioner shall be a nonvoting, ex officio member of the panel and shall be entitled to attend all panel meetings, either in person or by representative.

(c) The board shall have the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. Without limitation, the board may: (1) employ or contract with officers and employees to administer the authority; (2) retain outside actuarial, geological, and other professionals; (3) enter into other obligations relating to the operation of the authority; (4) invest the moneys in the California Earthquake Authority Fund; (5) obtain reinsurance and financing for the authority as authorized by this chapter; (6) contract with participating insurers to service the policies of basic residential earthquake insurance issued by the authority; (7) issue bonds payable from and secured by a pledge of the authority of all or any part of the revenues of the authority to finance the activities authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as the Treasurer shall approve; (8) pledge all or any part of the revenues of the authority to secure bonds and any repayment or reimbursement

obligations of the authority to any provider of insurance or a guarantee of liquidity or credit facility entered into to provide for the payment of debt service on any bond of the authority; (9) employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the Treasurer in connection with the issuance and sale of any bonds; (10) issue or obtain from any department or agency of the United States or of this state, or any private company, any insurance or guarantee of liquidity or credit facility determined to be appropriate by the Treasurer to provide for the payment of debt service on any bond of the authority; (11) engage the commissioner to collect revenues of the authority; (12) issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer shall approve; and (13) perform all acts that relate to the function and purpose of the authority, whether or not specifically designated in this chapter.

(d) The authority shall reimburse board and panel members for their reasonable expenses incurred in attending meetings and conducting the business of the authority.

(e) (1) There shall be a limited civil immunity and no criminal liability in a private capacity, on account of any act performed or omitted or obligation entered into an official capacity, when done or omitted in good faith and without intent to defraud, on the part of the board, the panel, or any member of either, or on the part of any officer, employee, or agent of the authority. This provision shall not eliminate or reduce the responsibility of the authority under the covenant of good faith and fair dealing.

(2) In any claim against the authority based upon an earthquake policy issued by the authority, the authority shall be liable for any damages, including damages under Section 3294 of the Civil Code, for a breach of the covenant of good faith and fair dealing by the authority or its agents.

(3) In any claim based upon an earthquake policy issued by the authority, the participating carrier shall be liable for any damages for a breach of a common law, regulatory or statutory duty as if it were a contracting insurer. The authority shall indemnify the participating carrier from any liability resulting from the authority's actions or directives. The board shall not indemnify a participating carrier for any loss resulting from failure to comply with directives of the authority or from violating statutory, regulatory, or common law governing claims handling practices.

(4) No licensed insurer, its officers, directors, employees, or agents, shall have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement



established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.

(5) Subject to the provisions of Section 10089.21, nothing in this chapter shall be construed to limit any exercise of the commissioner's power, including enforcement and disciplinary actions, or the imposition of fines and orders to ensure compliance with this chapter, the rules and guidelines of the authority, or any other law or rule applicable to the business of insurance.

(6) Except as provided in paragraph (3) and by any other provision of this chapter, there shall be no liability on the part of, and no cause of action shall be permitted in law or equity against, any participating insurer for any earthquake loss to property for which the authority has issued a policy unless the loss is covered by an insurance policy issued by the participating insurer. A policy issued by the authority shall not be deemed to be a policy issued by a participating insurer.

(f) The Attorney General, in his or her discretion, shall provide a representative of his or her office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall be compensated for legal service rendered in the manner specified in Section 11044 of the Government Code.

(g) The authority may sue or be sued and may employ or contract with that staff and those professionals the board deems necessary for its efficient administration.

(h) (1) The authority may contract for the services of a chief executive officer, a chief financial officer, and an operations manager, and may contract for the services of reinsurance intermediaries, financial market underwriters, modeling firms, a computer firm, an actuary, an insurance claims consultant, counsel, and private money managers. These contracts shall not be subject to otherwise applicable provisions of the Government Code and the Public Contract Code, and for those purposes, the authority shall not be considered a state agency or other public entity. Other employees of the authority shall be subject to civil service provisions. The total number of authority employees subject to civil service provisions shall not exceed 25.

(2) When the authority hires multiple private money managers to manage the assets of the California Earthquake Authority Fund, other than the primary custodian of the securities, the authority shall consider small California-based firms who are qualified to manage the money in the fund. The purpose of this provision is to prevent the exclusion of small qualified investment firms solely because of their size.

(i) Members of the board and panel, and their designees, and the chief executive officer, the chief financial officer, and the operations manager of the authority shall be required to file financial disclosure statements with the Fair Political Practices Commission. The

appointing authorities for members and designees of the board and panel shall, when making appointments, avoid appointing persons with conflicts of interest. Section 87406 of the Government Code, the Milton Marks Postgovernment Employment Restrictions Act of 1990, shall apply to the authority. Members of the board, the chief financial officer, the chief executive officer, the chief operations manager, the chief counsel, and any other person designated by the authority shall be deemed to be designated employees for the purpose of that act. In addition, no member of the board, nor the chief financial officer, the chief executive officer, the chief operations manager, and the chief counsel, shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into a participating agreement, or a reinsurance, bonding, letter of credit, or private capital markets contract with the authority during the time the employee was employed by the authority, which that member or employee had negotiated or approved, or participated in negotiating. A violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.

(j) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the board and the panel.

SEC. 3. Section 10089.14 of the Insurance Code is amended to read:

10089.14. (a) The authority shall not issue any earthquake policy and no insurer shall transfer any earthquake risk to the authority until all of the following conditions have been met:

(1) The Internal Revenue Service has determined that the authority will be or is exempt from federal income tax.

(2) Insurers whose cumulative residential property insurance market share is more than 70 percent of the total residential property insurance market in California, measured as of January 1, 1995, have filed letters of intent, with binding contractual obligation, to participate in the authority.

(3) The authority has obtained letters of intent, with binding contractual obligation, for capital contributions in the amounts set forth in Section 10089.15.

(4) The authority has obtained appropriate risk transfer ability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by all participating insurers.

(b) Except as permitted by subdivision (e) of Section 10089.15 and subdivision (b) of Section 10089.16, insurers shall not be entitled to transfer any earthquake risk to the authority until they have met the

capital contribution requirements set forth in Section 10089.15, and no insurer shall be entitled to transfer any earthquake risk to the authority pursuant to Section 10089.27 unless the insurer has signed a contract to participate in the authority, is in compliance with the capital contribution requirements set forth in Section 10089.15, and has complied with any related requirements set by the board.

SEC. 4. Section 10089.15 of the Insurance Code, as added by Section 2 of Chapter 944 of the Statutes of 1995, is amended to read:

10089.15. (a) Initial operating capital shall be contributed by insurance companies admitted to write residential property insurance in the state. Each insurer that elects to participate in the authority shall contribute as its share of operating capital an amount equal to one billion dollars (\$1,000,000,000) multiplied by the percentage representing that insurer's residential earthquake insurance market share as of January 1, 1994, as determined by the board. A minimum of seven hundred million dollars (\$700,000,000) in commitments shall be required before the authority may become operational.

(b) Until the authority becomes operational, contributions of initial operating capital shall be held by the commissioner in trust for the contributing insurers in the California Earthquake Authority Fund.

(c) Because insurers will retain the risk of earthquake losses on individual earthquake policies until they are renewed into the authority, participating insurers may elect to contribute operating capital in 12 installments payable on the first day of each successive calendar month after the insurer elects to participate. Each insurer shall compute its monthly installment based on the portion of the insurer's earthquake coverage that will be renewed into the authority during the next month. The final installment shall be equal to the excess of the participating insurer's required contribution over the sum of the previous 11 installments. Those insurers that elect to participate in the authority after the beginning operating date of the authority shall make initial capital contributions calculated using their residential earthquake insurance market share as of January 1, 1994, or the date of their election to participate in the authority, whichever contribution amount is greater.

(d) An insurer or insurer group that represents 1.25 percent or less of the residential property insurance market, as measured by premium volume, or that has a surplus of less than one billion dollars (\$1,000,000,000), may elect to become a participating insurer with the full rights and responsibilities of participating insurers of the authority, pursuant to the provisions of this section.

(e) The insurer or insurer groups defined in subdivision (d) may elect to contribute their operating capital, as required by subdivision (a) of Section 10089.15, in 60 equal monthly installments, payable on the first day of each successive calendar month after the insurer

elects to participate. In the event that earthquake losses result in the authority's payment of claims while the authority's available funds are inadequate to meet claims liabilities, and insurers participating under this section have operating capital contributions outstanding, the operating capital contributions necessary to meet any unfunded claims liabilities will become due and payable within 30 days of a request for such accelerated payment by the board, not to exceed the maximum contribution owed by each insurer.

(f) No insurer may elect to contribute operating capital pursuant to subdivision (e) unless the aggregate premium or aggregate surplus of all affiliated insurers in its group meets the eligibility standards established by subdivision (d).

SEC. 5. Section 10089.16 of the Insurance Code is amended to read:

10089.16. (a) On application to the board, payment of any assessments and fees calculated by the board, and fulfillment of any additional requirements imposed by the board, nonparticipating insurers may become participants in the authority with all rights and privileges attendant to that participation.

(b) In order to act upon any findings and recommendations reported to the Legislature pursuant to Section 10089.13, or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, the board is authorized to open the authority to participation by insurers who have not elected to participate in compliance with Section 10089.15. In implementing the authority granted by this section, the board may:

(1) Offer incentives for insurers to participate in the authority.

(2) Allow any insurer or insurer group that has not elected to become a participating insurer to become an associate participating insurer without complying with the capital contribution requirements of Section 10089.15 if it has maintained or exceeded its number of policies of residential property insurance written as of January 1, 1996.

(c) Any action by the board pursuant to subdivision (b) shall be subject to the following conditions and limitations:

(1) Any deliberation and action by the board shall be conducted at a public meeting of the board.

(2) No action may be taken within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance.

(3) The board shall have no authority to modify the requirements of Section 10089.23 or 10089.30, or to provide, in any other manner, for reduction of the liability of an insurer or insurer group to comply with the assessments placed upon participating insurers in the event of a loss.

(4) Notwithstanding Section 10089.11, any action of the board pursuant to subdivision (b) shall be by regulation promulgated by the board. Notwithstanding any other provision of law, there shall be no authority by the board to promulgate emergency regulations to implement subdivision (b). No regulations may be proposed within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance. Notwithstanding any exception provided in Section 11343 of the Government Code, any regulation adopted pursuant to subdivision (b) shall be submitted to the Office of Administrative Law for approval pursuant to the Administrative Procedure Act.

(5) Any action by the board to establish an incentive pursuant to subdivision (b) that is available to a single insurer or insurer group shall be based upon standards adopted by the board that are not arbitrary or discriminatory. Notwithstanding Section 10089.11, these standards shall be established by regulation promulgated by the board.

(6) A finding of necessity pursuant to subdivision (b) shall state the specific facts and conditions that establish the necessity and justify the actions to implement subdivision (b). All materials and documents prepared or used by the authority to determine the necessity to implement subdivision (b), other than proprietary materials and documents owned or licensed by third parties, shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase copies of these documents from the authority at actual cost.

(d) Associate participating insurers shall place all new policies of residential earthquake insurance, when writing new policies of residential property insurance, into the authority. Insurers placing policies with the authority under this section shall be subject to the assessments provided for in Sections 10089.23 and 10089.30. Notwithstanding subdivision (m) of Section 10089.5, “residential earthquake insurance market share” for purposes of any assessments pursuant to Sections 10089.23 and 10089.30 levied on an associate participating insurer shall mean an individual associate participating insurer’s total direct premium received for residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(e) (1) An associate participating insurer shall not cancel or refuse to renew a residential property insurance policy existing on the date it elected to become an associate participating insurer after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage.

(2) An associate participating insurer shall maintain in force any policy of residential property insurance existing on the date it elected to become an associate participating insurer after an offer of earthquake insurance has been accepted, unless the policy is properly canceled pursuant to Section 676 or the associate participating insurer has grounds for nonrenewal pursuant to subdivision (f).

(f) An associate participating insurer may refuse to renew a policy of residential property insurance after an offer of earthquake coverage has been accepted if one of the following exceptions applies:

(1) The policy is terminated by the named insured.

(2) The policy is refused renewal on the basis of sound underwriting principles that relate to the coverages provided by the underlying policy of residential property insurance and that are consistent with the approved rating plan and related documents filed with the department as required by existing law.

(3) The commissioner finds that the exposure to potential losses will threaten the solvency of the associate participating insurer or place the associate participating insurer in a hazardous condition. “Hazardous condition” has the same meaning as in Section 1065.1 and includes, but is not limited to, a condition in which an associate participating insurer makes claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25 percent for payment of those claims.

(4) There is cancellation under Section 676.

(5) The associate participating insurer has lost or experienced a substantial reduction in the availability or scope of reinsurance coverage or a substantial increase in the premium charged for reinsurance coverage for its residential property insurance policies, and the commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in the associate participating insurer’s reinsurance position.

(6) The named insured is insured based upon membership in a motor club, as defined in Section 12142, and the membership in that organization is terminated as provided in paragraph (2) of subdivision (c) of Section 1861.03.

(g) For associate participating insurers, underwriting standards applicable to residential property insurance shall not be applied in an unfairly discriminatory fashion against any person who accepts or elects to continue earthquake coverage.

(h) Associate participating insurers shall be subject to the following requirements:

(1) Associate participating insurers shall conform to all provisions of the authority’s plan of operation applicable to participating insurers.



(2) No property that has previously been covered by a policy of residential earthquake insurance written by the associate participating insurer or associate participating insurer group, absent at least one full policy year with an insurer not affiliated with the associate participating insurer or its group, may be placed into the authority by an associate participating insurer.

(3) Any associate participating insurer or associate participating insurer group defined in paragraph (2) of subdivision (b) that has failed to maintain or exceed the number of policies of residential property insurance in force on January 1, 1996, may become an associate participating insurer by contributing additional capital into the authority at a rate to be established by the board, which shall be a per policy rate comparable to the average cost per policy paid by a participating insurer that joins the authority pursuant to Section 10089.15.

(i) Any associate participating insurer shall be required to establish procedures to verify compliance with this section. The procedures shall require verification that each basic residential earthquake policy written by the authority complies with paragraph (2) of subdivision (h).

(j) Any violation of this section may be enforced as a violation of the Unfair Trade Practices Act (Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of basic residential earthquake insurance written in the authority by an associate participating insurer in violation of this section shall be deemed to be a separate violation of the Unfair Trade Practices Act.

(k) For purposes of this section, no insurer or associate participating insurer may participate in the authority unless all affiliated insurers participate in the authority.

(l) Policies of basic residential earthquake insurance written by associate participating insurers shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1. Except as provided in Section 10089.34, insurance policies written by participating insurers that are not associate participating insurers shall not be subject to assessment by the California Insurance Guaranty Association if the assessment is imposed to pay claims covered by policies of basic residential earthquake insurance written by an associate participating insurer.

SEC. 6. Section 10089.18 of the Insurance Code is repealed.

SEC. 7. Section 10089.28 of the Insurance Code is amended to read:

10089.28. (a) All policies of residential earthquake insurance provided by the authority shall be written by the authority. Authority policies shall be marketed and policyholders serviced by the participating insurer that writes the underlying policy of residential property insurance, and participating insurers shall be reasonably

compensated for the claims and policyholder services they provide on behalf of the authority. Authority services may be performed on behalf of the authority in any reasonable manner by the participating insurer that is in compliance with statutory, regulatory, and case laws regarding claims handling practices; provided, however, where the authority has promulgated specific procedures to govern its operations, the participating insurer shall conform its practices to those procedures. The authority procedures shall comply with statutory, regulatory, and case law governing claims handling practices. Nothing in this provision shall be deemed or construed to affect any duty or liability of the authority or participating carrier as set forth in paragraphs (2) and (3) of subdivision (e) of Section 10089.7.

(b) The participating insurer shall notify each of its insureds that the authority is the provider of earthquake coverage under the policy. The form and method of notice shall meet standards established by the commissioner by regulation. The authority shall provide to participating insurers appropriate applications and forms and shall maintain records of all policies written, moneys received, and claims paid.

(c) The duty of an agent or broker to investigate the financial condition of the authority before placement of insurance shall be the same as the duty of an agent or broker to investigate the financial condition of an admitted insurer before placement of a policy of insurance.

SEC. 8. Section 10089.29 of the Insurance Code is amended to read:

10089.29. (a) If benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (3) all reinsurance actually available and under contract to the authority, and (4) all capital committed and actually available by contract to the authority from private capital markets, the Treasurer, as agent for sale of bonds for the authority, may sell investment grade revenue bonds or issue or secure other debt financing of the authority or any combination of the revenue bonds or debt financing in an amount up to one billion dollars (\$1,000,000,000), in an amount determined by the board pursuant to Section 10089.32. The Treasurer shall make available the net proceeds of the revenue bonds or debt financing as funding for the authority. These funds shall not be used to replenish the fund. Failure of the authority to obtain such funding for any reason shall not obligate the State of California to provide or arrange replacement funding for the authority. The Treasurer may sell revenue bonds for the purpose of refunding the revenue bonds or other debt financing when authorized to do so by the board, and the

surcharge authorized by this section may be used to repay that refunding.

(b) In the event of a revenue bond sale or debt financing arrangement pursuant to this section, the authority shall have the power annually to surcharge all authority policies to secure funds solely to repay the bonded indebtedness or other debt. The net surcharge collected shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars (\$1,000,000,000), plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for and interest on those revenue bonds or other debt. In no event shall the surcharge on any authority policy exceed 20 percent of the annual basic residential earthquake insurance premium in any one year for the policy.

(c) The total amount of indebtedness and policy surcharges authorized under this section shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars (\$1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once the authority has levied policy surcharges in an amount equal to the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event more than one billion dollars (\$1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, the authority's power to surcharge policies shall cease and the authority shall be prohibited from levying additional surcharges pursuant to this section.

(d) Consistent with the provisions of Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.

SEC. 9. Section 10089.30 of the Insurance Code is amended to read:

10089.30. If benefits paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (c) all reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments

pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the maximum limits in this section. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars (\$2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share percentage multiplied by two billion dollars (\$2,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The board shall make assessments pursuant to this section by the same method set forth in paragraph (2) of subdivision (a) of Section 10089.23, in proportion to each participating insurer's residential earthquake insurance market share. The assessment shall be limited to the amount necessary to pay the expected claims of the authority and return the authority's available capital to three hundred fifty million dollars (\$350,000,000), as determined by the board, subject to approval by the commissioner.

SEC. 10. Section 10089.35 of the Insurance Code is amended to read:

10089.35. (a) If at any time the board determines that all the authority's available capital may be exhausted and no source of additional funds such as assessments, reinsurance, or private capital market moneys will be available to the authority to pay policyholder claims, the board shall draw up and present to the commissioner a plan to pay policyholder claims on a pro rata basis or in installment payments. The board shall maintain sufficient capital to ensure the continued operation of the authority for the purpose of implementing the proration or installment plan. At this point, the commissioner shall adopt a schedule for reinstitution of an insurer's statutory obligation to offer earthquake coverage by a means other than placement in the authority. In no event shall the schedule adopted pursuant to this subdivision be for a period longer than six months.

(b) Upon presentation of that plan to prorate or pay in installments, the commissioner shall order the authority to cease renewing or accepting new earthquake insurance policies and may apply to the superior court for orders or injunctions as the commissioner deems necessary to prevent any event or occurrence adverse to the authority, including, but not limited to, any or all of the following:

(1) Interference with the commissioner's consideration and implementation of a plan for pro rata or installment payment of policyholder claims under this section.

(2) Interference with or attachment of the assets of the authority.

(3) Institution or prosecution of any actions or proceedings against the authority.

(4) The obtaining of preferences, judgments, attachments, or other liens or levies against the authority or its assets.

(5) The withholding by a participating insurer or any other person of any premium, surcharge, assessment, or other amount lawfully due and owing to the authority.

(c) Entry of orders or injunctions obtained by the commissioner upon the application permitted by subdivision (a) shall not vest the superior court with general jurisdiction over the business or assets of the authority or any plan for the pro rata or installment payment of policyholder claims under this section, and the superior court's jurisdiction shall be limited to the entry and enforcement of those orders and injunctions.

(d) The State of California shall have no liability for payment of claims in excess of funds available pursuant to this chapter. The State of California, and any of the funds of the State of California, shall have no obligations whatsoever for payment of claims or costs arising from this act, except as specifically provided in this act.

SEC. 11. Section 10089.36 of the Insurance Code is amended to read:

10089.36. In the event a natural disaster program is enacted by Congress, the panel shall convene and prepare a plan to dissolve the authority or conform this act with the federal program. Following its deliberations, the panel shall recommend a plan of action to the board and the Legislature.

SEC. 12. Section 10089.40 of the Insurance Code is amended to read:

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake loss. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.



(b) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(c) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of not less than 5 percent on the authority-issued policy of residential earthquake coverage, as long as the discount or credit is determined actuarially sound by the authority.

(d) All rates shall be approved by the commissioner prior to their use.

SEC. 13. Section 10089.41 of the Insurance Code is amended to read:

10089.41. (a) The offer of an authority policy by a participating insurer shall constitute a mode of insurer compliance with Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, and as set forth in Section 10084.

(b) If the authority ceases operation for any reason, including, but not limited to, repeal of this chapter or insolvency of the authority, participating carriers shall no longer be able to satisfy the requirement to offer residential earthquake insurance coverage by placement within the authority. The commissioner shall adopt a schedule in accordance with subdivision (a) of Section 10089.35 to establish when participating carriers shall be required to offer coverage by another mode authorized pursuant to Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2 to those policyholders for whom they write the underlying policies of residential property insurance.

(c) If the authority ceases operation pursuant to a statute enacted by the Legislature, that statute shall determine the duty of participating insurers to provide earthquake insurance pursuant to Chapter 8.5 (commencing with Section 10081). Chapter 8.5 (commencing with Section 10081) shall remain in effect unless specifically repealed by that statute.

SEC. 14. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 15. This act shall become operative only if Senate Bill 1993 is also enacted.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote the restoration of affordable and available homeowners' insurance for all Californians, provide protection from

the devastating and catastrophic losses caused by earthquakes, and continue California's economic growth, it is necessary that this act take effect immediately.

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